

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ROBERT BLANKENSHIP,)	
)	
Plaintiff,)	
)	
vs.)	
)	CIVIL ACTION NO. 2:06cv-648
PFIZER, INC., BOEHRINGER)	
INGELHEIM PHARMACEUTICALS,)	
INC.; DAVID ROHLING; KMART OF)	
MICHIGAN, INC.; ART REDDING;)	
KELLI STRANGE, et al.,)	
)	
Defendants.)	

PLAINTIFF'S MOTION TO REMAND

Plaintiff, Robert Blankenship, by and through his counsel of record, respectfully requests that this Court remand the above cause to the Circuit Court for Barbour County, Clayton Division, from which it was removed. The Defendants have failed to establish that this cause falls under the jurisdiction of the federal courts. Plaintiff brings this motion pursuant to 28 U.S.C. § 1447, and in further support hereof, states as follows:

1. This Court lacks jurisdiction over this matter in that the Court could not have had "original" jurisdiction over this matter, had the Plaintiff elected to file the cause in federal court, as required by 28 U.S.C. § 1441.
2. This cause does not present any federal questions which would invoke this Court's jurisdiction over these proceedings, as permitted by 28 U.S.C. § 1331. State law predominates over the issues in this cause.

3. Two of the five Defendants share the same state citizenship as the Plaintiff.¹ Plaintiff, Robert Blankenship, is a resident of the State of Alabama and Defendants, David Rohling and Kelli Strange are residents of the State of Alabama. As such, complete diversity of citizenship, as mandated by 28 U.S.C. § 1332 is absent.

4. Defendant Boehringer Ingelheim Pharmaceuticals, Inc.'s assertion that the Plaintiff has fraudulently joined the in-state, individual Defendants is without merit and is unsupported by the evidence in this cause. Plaintiff in his state court complaint averred viable claims under Alabama law against all Defendants, and, as such, all Defendants are properly joined to this action. Defendant Boehringer Ingelheim Pharmaceuticals, Inc. has failed to establish that Alabama residents, David Rohling and Kelli Strange, were fraudulently joined by Plaintiff for the purpose of defeating federal jurisdiction.

For the reasons stated above and in the accompanying Brief in Support of Motion to Remand with attached affidavits, Plaintiff urges the Court to remand this cause of action to the Circuit Court of Barbour County, Alabama.

Respectfully submitted this 4th day of August, 2006.

/s/ J. Greg Allen
J. GREG ALLEN (ALL021)
Attorney for Plaintiff

¹ Defendant Kmart of Michigan, Inc., an out-of-state corporation was originally named in the Complaint but was dismissed pursuant to Rule 41, *Alabama Rules of Civil Procedure*.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing document with the Court using the CM/ECF system, which will send notification of such filing to the following on this the 4th day of August, 2006.

/s/ J. Greg Allen
OF COUNSEL

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and David Rohling**

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